

ORIGINAL

BEFORE THE
Federal Communications Commission

RECEIVED

WASHINGTON, D.C.

MAY 31 1988

Federal Communications Commission
Office of the Secretary

In re Application of)

AMERICOM, A California Limited)
Partnership, Station KHTX(AM),)
Truckee, California)

FCC File No. BP-871007AI

For Major Modification of)
Facilities)

To: The Chief, Mass Media Bureau

JUN 2 1988

AM BRANCH

JUN 1 1 20 AM '88
AUGUST DIVISION

REPLY TO
RESPONSE TO PETITION TO DENY

Constant Communications Company of Nevada, Inc., the licensee of Station KQLO(AM), Reno, Nevada ("KQLO"), by its attorneys and pursuant to Section 73.3584 of the Commission's rules, hereby submits its Reply to the "Response to Petition to Deny" filed by AMERICOM, a California Limited Partnership, licensee of Station KHTX(AM) (formerly KTRT(AM)), Truckee, California in the above-referenced proceeding.^{1/}

I. Background

1. In the above-referenced application, KHTX is proposing a major modification of its facilities by changing its city of

^{1/} KQLO requested additional time to file this reply in order to secure documents from the Nevada County Planning Department, copies of which are attached.

license from Truckee, California, a community with a 1980 population of 1,392 to Sparks, Nevada, a community with a 1980 population of 35,300. In its Petition to Deny the KHTX major change application, KQLO showed that KHTX has failed to satisfactorily establish that a transmitter site is not available in or around Truckee, California. Furthermore, KQLO demonstrated that KHTX's proposal to remove Truckee, California's only radio service to Nevada raised serious Section 307(b) concerns requiring an evidentiary hearing.

II. KHTX Has Failed To Establish That Land
For A Transmitter Site Is Not Available
In The Truckee, California Area

2. With its Petition to Deny, KQLO submitted a letter from the owner of a real estate company, dated March 25, 1988, stating that he had researched the Truckee area for a site location on which to put radio transmitting towers and that there were sites available for purchase and/or lease that would accommodate size, zoning and location. While KHTX attacks the competence of KQLO's documentation, it is significant that the Commission's files do not reflect any authoritative documentation from KHTX as to the lack of available sites in the Truckee, California area.

3. On November 7, 1986, the Chief of the Audio Services Division issued a letter to KHTX denying its petition for reconsideration of the staff's action of March 19, 1986. The March 19, 1986 action had denied KHTX's request for waiver of Section 73.24(j) of the rules and dismissed KHTX's application to relocate its transmitter site (BMP-850130AD) which was dependent

upon grant of the requested waiver. Copies of the November 7, 1986 and March 19, 1986 rulings are attached hereto as Exhibits A and B, respectively.

4. In the March 19, 1986 letter, the Commission's staff advised KHTX:

It is your position in seeking waiver of Section 73.24(j) that no site offering coverage more comprehensive than that produced from your proposed site is available. However, you fail to introduce any documentation to support this contention.

(Exhibit B, Emphasis supplied.) In denying the petition for reconsideration filed by KHTX, the staff again found that KHTX had failed to demonstrate that no other site is available (see Exhibit A). The staff's November 7, 1986 letter advised KHTX:

...you describe what you contend are the only three sites in the Truckee region which are zoned for radio towers and discuss the problems you have encountered with each: Site 1, the original site from which KHTX was evicted; Site 2, the present site which necessitates a waiver of Section 73.24(j), as the proposed nighttime interference-free contour would provide no coverage (0 percent) to Truckee; and Site 3, one for which KHTX has a construction permit but no local permission to build.

You argue that the Commission should reconsider its dismissal of your construction permit for Site 2 and grant a waiver of 73.24(j), as no other site is available. However, you also state that KHTX is seeking to reopen the question of the validity of the building permit for Site 3, and that the planning board may be persuaded to overrule the homeowner's objections to your building on the site.

(Exhibit A.)

5. Other than self-serving representations by a principal of KHTX and its attorney, the Commission's files do not reflect any documentation that there are no other available sites in the Truckee area. KHTX has repeatedly suggested in correspondence to the Commission that "[t]he Lake Tahoe Basin is the most heavily regulated area in the nation from an environmental and land use planning point of view" (see KHTX Petition for Reconsideration filed April 21, 1986), but KHTX has not even shown that Truckee, which is approximately 12 miles northwest of Lake Tahoe, is encompassed in the area that is allegedly heavily regulated. Indeed, the records of the Nevada County Planning Department attached hereto as Exhibits C and D reflect that the planning authorities desire very much to accommodate KHTX since it is the only radio station serving Truckee.^{2/}

6. Furthermore, KHTX has failed to document the unavailability of Site 3. Indeed, KHTX voluntarily abandoned Site 3. Although KHTX was granted a construction permit for Site 3 (BP-831020AA) by the FCC, it contended that it could not obtain final zoning approval for the site. However, the records of the Nevada County Planning Department (see Exhibit C) reflect that KHTX did obtain a building permit for a 200-foot tower at Site 3 in 1983. In 1984, KHTX applied for a modified building permit to

^{2/} In 1983 it was City News Service of Los Angeles, Inc. which filed the applications with the Nevada County Authorities. City News at that time was the majority owner of The December Group, licensee of KHTX (then KTRT). The Chairman, President and 70% owner of City News was A. Thomas Quinn. A. Thomas Quinn is now a one-third General Partner of the licensee, AMERICOM, a California Limited Partnership.

go to 400 feet and then promptly abandoned its application for
400 feet and let its 200 foot permit expire.^{3/} The 1984 records

no available sites in Truckee. The November 7, 1986 staff letter had, in passing, informed KHTX that, in addition to not having demonstrated that no other site was available in Truckee, it had not addressed other possible alternatives such as changing community of license. KHTX apparently grabbed on to this suggestion as Commission sanction for changing its community of license. Thus, in a letter to the Commission, dated December 5, 1986, KHTX claimed to be investigating four solutions to its problem and characterized the specification of an alternate community of license as number two on its list. In contrast, the feasibility of using Site 3 was relegated to number four on the list and KHTX indicated that "due to the extent and nature of local opposition to that site, it has now all but abandoned any hopes of getting that site." See Exhibit E hereto.

9. Significantly, there is a valid outstanding lease for Site 3 which was executed in July 1983 and does not expire until July 20, 2008. No limitation on antenna height is specified in the lease, and there is no indication that the yearly lease payment of \$900 is in arrears. A copy of the lease is included in Exhibit C.

10. Thus, KHTX has failed to demonstrate that Site 3 is not available. Indeed, there is every indication that the site is available. Furthermore, KHTX has never supplied adequate

documentation that there are no other available and technically feasible sites in or around Truckee.^{5/}

III. KHTX's Proposal To Change Its Community Of License Is Inconsistent With Section 307(b) Of The Communications Act of 1934, As Amended

11. In its Petition to Deny, KQLO demonstrated that KHTX's proposal to change its community of license from Truckee, California to Sparks, Nevada raises serious concerns under Section 307(b) of the Communications Act. Sparks, Nevada is approximately 30-40 miles away from Truckee. While the staff letter of November 7, 1986 mentioned, in passing, that KHTX might look at changing its city of license, the staff never suggested that a wholesale removal of the frequency from the area would be approved. There are numerous communities around Truckee which could have been considered by KHTX but apparently were not.

12. In any event, the important point is that KHTX totally failed to demonstrate the nonavailability of sites in the Truckee area. (See the staff letter of November 7, 1986, Ex. B.) KHTX argues, in response to KQLO's Petition to Deny, that "[a]bsent reliable evidence that there are alternate sites from which coverage of Truckee can be obtained... there is no real §307(b)

^{5/} Indeed, the December 5, 1986 letter specifically mentions as alternative two locating the KHTX tower in an "industrial" zoned area of Truckee. While the letter states that a radio tower is not a permissible use in an "industrial" area, KHTX recited its optimism about obtaining a variance. As KHTX had been able to have a radio tower added as a permissible use for a "Forest Recreation" zoned area (see Exhibit C), KHTX's optimism seems well founded.

issue." This argument stands the necessary showing on its head. It is KHTX which must demonstrate the unavailability of other sites, and it has never submitted proper documentation establishing that fact.

13. Furthermore, KHTX's application proposing a change in community of license fails to address cogent Section 307(b) concerns. Under Commission precedent, KHTX is obligated to provide information about the need for reception and transmission services in the respective communities. See Kent-Ravenna Broadcasting Co., 22 RR 2d 605, 611 (1961) and Letter to Robert B. Jacobi, Esq. in re Mount Wilson FM Broadcasters, Inc., a copy of which is attached as Exhibit F. The staff's letter to Mount Wilson concerned Mount Wilson's application to change the community of license of Station KULA(AM) from Maunawili, Hawaii to Honolulu, Hawaii. Like KHTX in Truckee, KULA is the only radio station authorized to the community of Maunawili, while Honolulu, like Sparks, Nevada, has numerous radio stations authorized to it. The staff found that KULA's proposal on its face was inconsistent with Section 307(b) and required KULA to provide a written Section 307(b) showing. KHTX has made no such showing.^{6/}

^{6/} If and when KHTX submits such a showing, KQLO reserves the right to file a response.

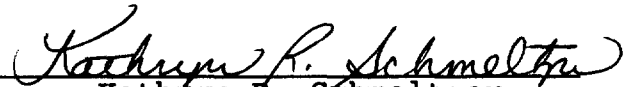
IV. Conclusion

In sum, KHTX's proposal to change its community of license cannot be granted. On its face, the application contains inadequate documentation and raises serious Section 307(b) issues. Consequently, the application must be denied or designated for an evidentiary hearing on appropriate issues.

Respectfully submitted,

CONSTANT COMMUNICATIONS COMPANY
OF NEVADA, INC.

BY



Kathryn R. Schmeltzer
John Joseph McVeigh

Its Attorneys

Fisher, Wayland, Cooper
& Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

Dated: May 31, 1988

EXHIBIT A

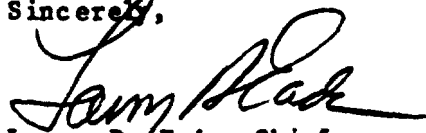
NY 100-1-1-1-1 1000

Americom, A California Limited Partnership

so fundamental a deviation from our basic licensing requirements. Furthermore, as the Commission does not preempt local building regulations, your request for such relief cannot be entertained.

In view of the above, your petition for reconsideration is hereby denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Eads".

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc:
Roger J. Metzler, Jr.

EXHIBIT B

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

March 19, 1986

IN REPLY REFER TO:

8910-HS

December Group
Radio Station KHTX
304 South Broadway
Suite 520
Los Angeles, California 90013

In re: KHTX, Truckee, CA
BMP-850130AD

Dear Sirs:

This is in reference to your application to relocate transmitter site (BMP-850130AD) filed on January 30, 1985. The proposal specifies a transmitter site a distance of 3.9 kilometers from the presently licensed location and 13.4 kilometers from the site approved in construction permit BP-831020AA. Included with the original filing is a request for waiver of Sections 73.3517-73.3520 of the FCC Rules and an associated filing on August 29, 1985 contained a request for waiver of the nighttime coverage rules (Section 73.24(j)).

Station KHTX has been operating under Special Temporary Authority (STA) for several months from the site requested in BMP-850130AD. This is the result of being evicted from your licensed site and your subsequent inability to procure access to the site granted in Permit BP-831020AA.

We have considered your requests for waiver of the aforementioned FCC Rules. First, as it pertains to Sections 73.3517-73.3520, there appears to be no substantive need for waiver of these sections, therefore, your request is dismissed as unnecessary. Secondly, we have reviewed your request for waiver of Section 73.24(j) of the Rules, a rule which requires in pertinent part that the nighttime interference-free contour of a proposed facility encompass the entire principal community to be served. Based upon your engineering exhibits, the KHTX proposed nighttime interference-free contour (22 mV/m) would provide no coverage (0 percent) to Truckee, California. In fact, your 22 mV/m contour, at its closest point to Truckee, would fall a distance of 4 kilometers from the community.

We have consistently viewed service to less than 80 percent of a community as being inadequate. Broadcast Station Assignment Standards, 39 FCC 2d 645, 670 (1973). Only a compelling showing of special circumstances can justify such deficient coverage. Hence, KHTX has not been shown to be so non traditional (see Bay Cities Communications Corp., 83 FCC 2d 210 (1980)) or serving so rapidly growing (see Garrett Broadcasting Service, 56 FCC 2d 372 (1975)) a city as to be beyond the fair and reasonable application of our requirements. Nor are the factors warranting waivers for minority applicants applicable here. See D & E Broadcasting Co., Inc., granted, Public Notice, Report No. 17661, Mimeo No. 34988 (Mass Media Bureau, released

December Group

August 19, 1980). Finally, there are no equitable considerations to guide us, as was the case Orman L. Kimbrough, 85 FCC 2d 594 (1981), where an applicant encountered coverage difficulties only after constructing its facilities in reliance upon Commission information.

It is your position in seeking waiver of Section 73.24(j) that no site offering coverage more comprehensive than that produced from your proposed site is available. However, you fail to introduce any documentation to support this contention. Additionally, you do not attempt to substantiate in any way the benefits to be derived from a facility that would produce absolutely no nighttime coverage of its licensed community as opposed to the resultant inefficient use of the spectrum space involved. Therefore, your request for waiver is denied and your application for site change (BMP-850130AD) is dismissed as being patently defective pursuant to Section 73.3566 of the Commission's Rules. ¹

Additionally, your Special Temporary Authority will be subject to one final ninety (90) day extension, upon request, at such time as the presently effective term has expired. Your best interests would be served during this

EXHIBIT C

1983 Records of Nevada County Planning Department

COUNTY OF NEVADA - STATE OF CALIFORNIA
PLANNING AGENCY/PLANNING DEPARTMENT

H.E.W. Building, 10433 Willow Valley Road
Nevada City, CA 95959

Phone: (916) 265-1440

LAND USE APPLICATION

Applicants should check () the appropriate application that is subject to the submittal.

General Plan Amendment: From _____ To _____

Zone Change: From _____ To _____

Tentative Map: PM _____ FM _____ TM ONLY _____

Site Plan ☒ Ministerial Site Plan _____

Use Permit ☒ Area Variance _____

APPLICATION INFORMATION

Full Name of Applicant City News Service of Telephone 916/546-5936
Los Angeles, Inc.

Address of Applicant P.O. Box 825, Kings Beach, CA P.O. Box 1265 Crystal Bay, NV
89402

Full Name of Property Owner(s) California State Lands

Telephone: 916/322-7821 (Ed Chatfield)

Address of Property Owner(s) 1807 - 13th Street, Sacramento, CA 95814

Contact Person Terry L. Castle Telephone 916/583-3417

Address of Contact Person P.O. Box 879, Tahoe City, CA 95730

Assessor's Parcel Number(s) 16-120-17 Acreage 152

Acreage covered by this application 4.05

Parcel Address or General Location Ptn. N.E. 1/4 Sec 36, T18N, R16E

Off Prosser Dam Road

Describe the project proposed by this application

Install a radio tower for KTRT Radio Station. There will be no grading except
for a 10'x10' transmitter building. No water or sewer required. Existing roads
will be used.

I hereby acknowledge that I have read this application and state that the information given is correct. I agree to comply with all County ordinances and State laws regulating property development.

Signature of applicant: Terry L. Castle Date 8/17/83

Signature of owner*: _____ Date _____

Signature of contact person: _____ Date _____

*May be waived if letter of authorization is filed.

XX

FOR OFFICE USE ONLY:

Application No. 1183-35-1583-60 Zoning District Map No. AM1138

1 LIC NOTICE INFORMATION SHEET

Date 8/22/83
Applicant/Project Title Conditional Use Permit of City News Service of Los Angeles, Inc.
File Number US3-35 & EIS83-60
Assessor's Parcel No. 16-120-17 Tax Area Code 77-004

- (1) Will the approval of this project, because of its size or location, have the potential to impact resources/rights-of-ways in the vicinity of the project, that could possibly constitute a substantial/significant deprivation of property rights of surrounding and adjacent landowners?

YES X NO _____

If yes, what method will be used to adequately and reasonably notice affected property owners? _____

Property owners within 300' of subject property

- (2) Will the approval of this project, because of its size and location, have the potential to impact resources/rights-of-ways in the vicinity of the project, that could possibly constitute a substantial/significant deprivation of property rights of landowners located within an area(s) other than those surrounding and adjacent to the subject site?

YES X NO

If yes, what method will be used to adequately and reasonably notice affected property owners?

and a minimum of two parcels removed.

(3) Additional Comments:

Reviewed by _____ Title _____ Date _____
Prepared by Stephanie Keellogg Title Planning Technician Date 8-22-83
Due Date _____
Mailed to Agencies, Applicant & Engineer on _____
Mail to Newspaper _____ By _____
To be published _____
Mail to Property Owners by _____

PUBLIC HEARING DATES:

ARC			
P.C.			
BZA			
BOARD			

P.C.

BZA

BOARD

ARC

CEL NO.

OWNER'S NAME AND MAILING ADDRESS

16-120-17

Calif, St. J (School)

16-120-06

USA TNF

16-120-07

A

16-120-14

"

16-120-16

"

16-120-25

R.K.K. + P.P. Desha, 2246 Kingston Ave, San Bruno CA 94066

16-120-01

USA - TNF

16-120-02

"

16-120-03

"

16-120-04

"

~~16-120-12~~

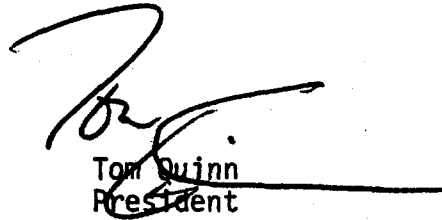
Erwin + Viola Olson, POB 159, Tahoe Vista CA 95732

~~16-120-05~~~~16-120-06~~

Conce. Hawaiian Coast P. 401 H...

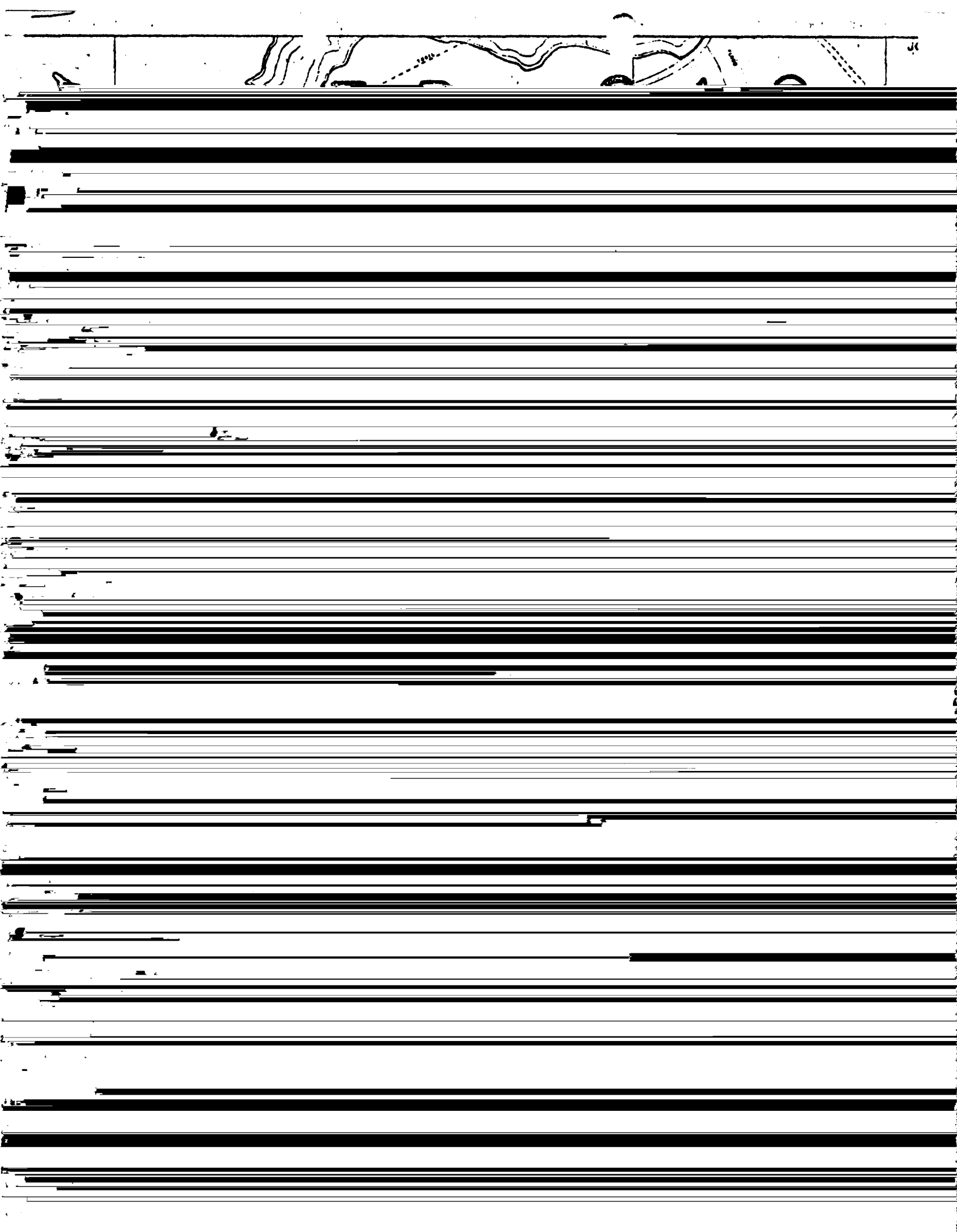
August 4, 1983

On behalf of City News Service, Inc., we authorize Terry Castle to act as our agent with regards to the proposal to Nevada County regarding the new site for KTRT A.M.'s tower for Truckee.

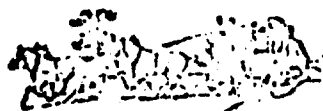


Tom Quinn
President

TQ:nr



Nevada County Historical Society



P.O. Box 1300
216 Main Street, Nevada City, California
95959

HISTORICAL and ARCHEOLOGICAL CHECKLIST

APPLICANT: Please complete the following series of questions.
Please consider anything in existence prior to the year 1920.
If you answer any item YES please provide us with the following
information: what the item is, a description, its' location and a
short statement as to its' history.

Name of person to contact
for more information

Terry Castle

Address Raymond Vail & Associates
P.O. Box 879

Tahoe City, CA 95730

Telephone 916/583-3417

- | YES | NO | THE PROPERTY CONTAINS: |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. A structure built prior to 1920. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. Signs of Native American activity or culture
(i.e., encampments, burial sites, mortars, etc.) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Signs of Oriental activity or culture. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Significant remnants of other cultures and peoples. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Indications of emigrant movements (i.e., signs of
emigrant trail). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Signs of toll roads, stage roads and other roads
prior to 1920. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 7. Signs of pioneer graves and/or cemeteries. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 8. Remnants or signs of railroad activity. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 9. Signs of early day water storage and conveyance,
i.e., flumes, canals, ditches, reservoirs, etc. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 10. Mining activity is known to have occurred on the
property. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 11. Signs or remnants of mining activity (i.e., equipment,
shafts, mills, frames, etc.). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 12. Signs of early lumbering activity (i.e., mills,
transportation systems, trestles, etc.). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 13. Signs of other early industrial activity. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 14. The property contains a townsite or a portion thereof. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 15. Other items, sites, structures, or remnants of
historical or archeological importance. |

Terry Castle

I declare under penalty of perjury that the above is true and correct.

Executed on 8/12/83, 197 , at Tahoe City, California.

COUNTY OF NEVADA

PLANNING DEPARTMENT

10433 Willow Valley Road
Nevada City, California 95959
(916) 265-1440

ENVIRONMENTAL IMPACT ANALYSIS FORM

File No. U83-35

Applicant's Parcel No. 16 120 17 Applicant's City Name County Phone No. 916/265-5000

Environmental Impact Analysis Form
Page 2

YES

NO

X

3. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.

X

4. Change in scenic views or vistas from existing residential areas or public lands or roads.

X

5. Change in pattern, scale or character of general area of project.

X

6. Significant amounts of solid waste or litter.

X

7. Change in dust, ash, smoke, fumes or odors in vicinity.

X

8. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.

X

9. Substantial change in existing noise or vibration levels in the vicinity.

X

10. Site on filled land or on slope of 10 percent or more.

X

11. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.

COUNTY OF NEVADA

PLANNING DEPARTMENT

When responding refer to File No: U83-35 & ETS83-60 Date: 8/23/83

Project Name: Conditional Use Permit of the City News Service of Los Angeles, Inc.

NEVADA COUNTY DEPARTMENTS

☒ Building Department
☐ Public Works
☒ c/o Wes Zachery
☐ c/o John Spencer
☐ c/o Wally Miller
☐ Sanitation District I
☐ c/o Mike Forga
☒ Environmental Health
☐ Ag. Commissioner, John Taylor
☐ County Counsel
☐ Superintendent of Schools
☐
☐
☐

SPECIAL DISTRICTS

☒ Fire District () Truckee
☐ Nevada Union High School
☐ Other School Dist. ()
☐ Tahoe-Truckee Sanitation Agency
☐ Truckee Sanitary Dist.
☐ Truckee-Donner Public Utility Dist.
☐ Nevada County Fair Dist.
☐ Resource Conservation Dist.
☐ Nevada Irrigation District
☐ Donner Summit Public Utility Dist.
☐ San Juan Ridge County Water Dist.
☐ Tahoe Forest Hospital District
☐ Tahoe-Donner Recreation & Park Dist.
☒ Truckee-Tahoe Airport Dist.
☐ Washington County Water Dist.

OTHER CITIES & COUNTIES

☐ City of Grass Valley
☐ City of Nevada City
☐ Placer Co. Plan. Dept.
☐ Sierra Co. Plan. Dept.
☐

FEDERAL AGENCIES

☐ Corps of Engineers
☐ Bureau of Land Management
☐ Forest Service
☐ Coyote & Hwy. 49, N.C.
☐ 12012 Sutton Way, G.V.
☐ P.O. Box 399, Truckee
☒ Federal Aviation Administration

PRIVATE UTILITY COMPANIES

☐ Donner Lake Utility Co.
☐ Glenshire Mutual Water Co.
☒ Sierra Pacific Power Co.
☐ Pacific Gas & Electric
☐ Pacific Telephone
☐ Grass Valley Office
☒ Tahoe City Office

SPECIAL INTEREST ORGANIZATIONS

☐ San Juan Ridge Taxpayers Assoc.
☐ Tahoe-Donner Env. Control Committee
☐ Truckee Downtown Merchants Assoc.
☐ Truckee Historical Society
☐ Nev. Co. Historical Society
☐ Nev. Co. Env. Council
☐ Nev. Co. Board of Realtors